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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ALLEN JAMES,

Defendant and Appellant.

D074013

(Super. Ct. No. SCD273088)

APPEAL from a judgment of the Superior Court of San Diego County, David M. Gill, Judge. Affirmed, remanded with directions.

Cathryn L. Rosciam, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, and Adrian R. Contreras, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted Allen James of evading an officer with reckless driving (Veh. Code, § 2800.2, subd. (a); count 2) and hit and run driving (Veh. Code, § 20002, subd.

(a); count 3). The jury acquitted him of a charge of resisting an executive officer with force (Pen. Code,¹ § 69; count 1). James admitted two prison prior allegations (§§ 667.5, subd. (b), 668).

The court sentenced James to the upper aggravated term of three years for count 2, evading an officer, plus one year for one prison prior. The court initially imposed, but stayed an additional one-year enhancement for the second prison prior. However, while this appeal was pending, the court struck the punishment for the second prison prior pursuant to section 1385, finding the punishment was sufficiently addressed with the imposition of the upper term for count 2. The court gave James credit for time served for the count 3 misdemeanor hit and run.²

The court imposed a restitution fine pursuant to section 1202.4, subdivision (b)(2) in the amount of \$2,400 plus an additional fine in the same amount pursuant to section 1202.45, which was stayed unless supervised supervision was revoked. The court imposed an assessment for court operations and facilities pursuant to section 1465.8, a conviction assessment pursuant to Government Code section 70373, and criminal justice administration fees pursuant to Government Code section 29550, et seq.

¹ Further statutory references are to the Penal Code unless otherwise stated.

² A separate jury in a separate case convicted James of failure to appear while on bail (§ 1320.5; count 1, Case No. SCD274713) and found true an allegation the offense was committed while he was released from custody on bail pending final judgment on this felony case (§ 12022.1, subd. (b)). In that case, the court sentenced James to eight months plus two consecutive years for the mandatory enhancement under section 12022.1, subdivision (b). The aggregate term for the two cases was six years and eight months.

James's court-appointed appellate counsel filed a brief under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), which raised no issues and requested we independently review the record to determine if the trial court committed any error. We granted James the opportunity to file a supplemental brief on his own behalf and he did not respond. We also requested supplemental briefing from the parties regarding the application, if any, of *People v. Dueñas* (2019) 30 Cal.App.5th 1157 and section 1237.2 to this matter.

We have independently reviewed the record under *Wende* and have found no reasonably arguable issues for reversal on appeal. We conclude section 1237.2 precludes our review of the fines and fees issue at this time because it is the sole arguable issue on appeal and defense counsel has made a request to the trial court for reduction of the imposed fines and fees, which is pending. This is "a prerequisite to any appeal which solely involves 'an error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs.' " (*People v. Alexander* (2016) 6 Cal.App.5th 798, 801 (*Alexander*)). We, therefore, remand for the sole purpose of allowing the trial court to consider the pending request for correction of fines and fees. In all other respects, we affirm the judgment.

BACKGROUND

On August 5, 2017, uniformed police officers in a marked police vehicle heard screeching tires and saw a car driven by James make an abrupt turn. The officers tried to follow. They saw James's car make a left turn and then another left turn into a parking lot of a restaurant where it drove the wrong way past a drive-through area with cars parked on both sides. James's car sideswiped the passenger side of a car waiting in the drive-

through line. James did not stop. He continued and turned left out of the parking lot onto another street.

The officers drove through another portion of the parking lot and made a left turn to try to catch up to James's vehicle. James was driving more than 50 miles per hour in an area with a posted speed limit of 35 miles per hour. When James approached a stop sign at an intersection, he slowed only enough to turn. He did not stop even though the officers activated their overhead red lights and siren.

James kept driving and turned right onto another street where he drove at a high rate of speed, approximately 60 miles per hour, in a residential area. He failed to stop at another stop sign where another vehicle that had the right-of-way had to stop to avoid a collision. James swerved and almost hit a parked car. James did not slow even in an area with several large speed bumps.

James turned right onto another street and continued at the same speed. When he approached a red traffic signal, he did not stop. He slowed enough to make a right turn, continued to another intersection where he did not stop for a traffic signal and turned left. James drove at speeds ranging from 45 to 60 miles per hour in this residential area. James weaved in and out of his traffic lane, crossing the double yellow line.

James continued driving through the neighborhood with steep inclines and declines at high rates of speed, making turns, and failing to stop at stop signs. At one point as he was driving, James threw a can out of the car window. Then he opened the driver's side door and dumped out about a hundred aluminum cans.

James accelerated down a street and, when he had just gone over the crest of a steep hill, suddenly stopped midway down the hill in the middle of the street. The officer driving the police vehicle slammed on the brakes, but the police vehicle hit James's car. James led officers in a circle around the same streets two more times and braked on the same hill each time. Eventually, James's vehicle was disabled by spike strips set up by another police unit. James did not slow or yield after running over the spike strips until his vehicle came to a stop. James then exited the vehicle and laid on the ground.

James committed between 20 and 25 violations of the Vehicle Code during the pursuit. These included failing to stop after hitting a car, failing to stop at stop signs, failing to stop at traffic signals, failing to follow basic speed laws, and crossing double yellow lines.

The defense presented evidence from an accident investigator who stated there were intermittent patches of locked wheel skids that appeared to be from the patrol vehicle's antilock braking. There were no other friction or skid marks on the road related to the accident. Defense counsel argued for acquittal on count 1 contending the officer's testimony that James slammed on his brakes in the middle of the incline was undermined by the lack of skid marks from James's car.

DISCUSSION

Appointed appellate counsel filed a brief summarizing the facts and proceedings below. Counsel presented no argument for reversal and instead requested we independently review the record for error as mandated by *Wende, supra*, 25 Cal.3d at pp. 441–442. To aid our review, and consistent with *Anders v. California* (1967) 386

U.S. 738, 744, counsel identified two possible appellate issues (*Anders* issues):

(1) whether the jury instruction for evading an officer with reckless driving was argumentative; and (2) whether the court's denial of the defense motion for a new jury venire violated appellant's right to trial by a fair and impartial jury. Having independently reviewed the record on appeal, we conclude there is no merit to either issue.

As to the first issue, we need not decide whether the written instruction was argumentative because, even assuming error, it was harmless. (*People v. Santana* (2013) 56 Cal.4th 999, 1012.) The written instruction for count 2 was based on CALCRIM No. 2181 and defined the phrase "driving with willful or wanton disregard for the safety of persons or property" as including "committing three or more violations that are assigned a traffic violation point." The pattern jury instruction suggested inserting alleged traffic violations for which a traffic violation point is assigned. The written instruction listed specific traffic violations alleged in this case, to which counsel did not object. However, the court's oral instruction did not recite specific traffic violations. The court gave general examples of traffic violations for which a point is assigned and stated counsel would refer to specific evidence. There was overwhelming evidence James committed more than three traffic violations.

As to the second issue, during voir dire the court told defense counsel a potential juror had answered a question, which the potential juror had answered twice. The court told defense counsel to "cut to the chase." Defense counsel later moved for a new jury panel, contending the court's demeanor or tone of voice when the court interrupted his

questioning of the potential juror was prejudicial to the defendant. The court denied the motion. The court noted counsel had used half of his time with irrelevant questions and the court felt the need to rein him in. The court also said defense counsel could make a curative statement to the panel if he wished. The court's isolated comments were not so prejudicial that it denied the defendant a fair trial. (*People v. Snow* (2003) 30 Cal.4th 43, 78.)

Finally, as to the issue of the court's imposition of fines and fees, we conclude section 1237.2³ precludes our review of the issue at this time since it is the only reasonably arguable issue on appeal. We will remand solely for the court to consider James's pending informal request to correct the fines and fees imposed, which is a prerequisite to any appeal of the issue. (*Alexander, supra*, 6 Cal.App.5th at p. 801.)

Our independent review of the record did not disclose any other reasonably arguable appellate issues. James has been competently represented by counsel in this appeal.

³ Section 1237.2 provides: "An appeal may not be taken by the defendant from a judgment of conviction on the ground of an error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction in the trial court, which may be made informally in writing. The trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs upon the defendant's request for correction. This section only applies in cases where the erroneous imposition or calculation of fines, penalty assessments, surcharges, fees, or costs are the sole issue on appeal."

DISPOSITION

We remand this matter for the limited purpose of allowing the trial court to consider the pending request for correction of fines and fees. In all other respects, the judgment is affirmed.

McCONNELL, P. J.

I CONCUR:

NARES, J.

I CONCUR IN THE RESULT:

HUFFMAN, J.